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Cinfab, Inc. and Sheet Metal Workers International Association, Local Union No. 24, AFL-CIO.
Case 9-CA-34891

February 27, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS HURTGEN
AND BRAME

Upon a charge filed by the Union on May 9, 1997, the General Counsel of the National Labor Relations Board issued a complaint on August 8, 1997, against Cinfab, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on December 29, 1997.

On January 21, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On January 23, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on December 29, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged as a sheet metal and fabrication contractor in the construction industry doing commercial

construction out of its Cincinnati, Ohio facility. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations purchased and received at its Cincinnati, Ohio location goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

From about April 7, 1997, until about June 9, 1997, the Respondent refused to hire applicant Anthony W. Records because he formed, joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to hire applicant Anthony W. Records from about April 7, 1997, until about June 9, 1997, we shall order the Respondent to offer him full employment in the position for which he would have been hired, absent the unlawful discrimination against him, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful refusal to hire and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Cinfab, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire applicants because they form, join or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, offer Anthony W. Records full employment in the position for which he would have been hired, absent the unlawful discrimination against him, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

(b) Make Anthony W. Records whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Remove from its file any reference to the unlawful discrimination and notify the discriminatee in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Cincinnati, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the no-

tices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 7, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 27, 1998

William B. Gould IV, Chairman

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to hire applicants because they form, join or assist Sheet Metal Workers International Association, Local Union No. 24, AFL-CIO, or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of the Board's order, offer Anthony W. Records full employment in the position for which he would have been hired, absent the unlawful discrimination against him, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges.

WE WILL make Anthony W. Records whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set

forth in a decision of the National Labor Relation's Board.

WE WILL, within 14 days from the date of this order, remove from our file any reference to the unlawful discrimination and, within 3 days thereafter, notify the discriminatee in writing that this has been done.

CINFAB, INC.